CHAPTER XIII.

PROTECTION OF THE FOREST AGAINST OFFENCES BY HUMAN AGENCY.

SECTION I.—PROVISIONS FOR THE PREVENTION OF OFFENCES.

Before considering the remedial provisions or punishment ordered for offences actually committed, it is more logical to consider what protective measures can be adopted to prevent or forestal forest offences.

This subject will, however, necessarily be alluded to when we come to speak of the duties of forest officers, so that here I shall only make a passing allusion to the fact that all forest and police officers are bound, if they can, to *prevent* offences, and they may interpose, that is, may warn people and require them to leave off trespassing, or any other act which they are about to commit[1]. Under this head also, as we shall afterwards see, there are numerous preventive provisions, in connection with timber transit, such as registering marks, prohibiting the carrying of marking hammers and other implements of the kind, regulating the establishment of saw-pits, and so forth; as it is convenient to devote a separate section to the subject of timber in transit, these matters may conveniently be left till we come to that section.

SECTION II.—THE LAW UNDER WHICH OFFENCES ARE PUNISHED.

§ 1.—*Punishment of acts committed.*

We are then to enter at once on the consideration of the acts which in forests are prohibited and punished. After arming the

[1] In France the Code has a special preventive rule, which, however, has not been copied in India. It is (Code For., Art. 146)—"Whoever is found in a forest off the ordinary roads or footpaths, armed with bill-hook, axe, hatchet, saw, or other implement of a like nature, shall be liable to a fine of ten francs and to the confiscation of such implement."

forest officer with powers to warn people, to interpose to prevent offences, it can only go further by making certain acts or omissions "offences" which the law is bound to take cognisance of and punish.

The offences are either acts or omissions which are dangerous, and which in fact neutralise the *protective* efforts of the forest staff (such as lighting fires in dangerous places, refusing to give information or help) or are acts or omissions which directly attack and injure the forest itself, or its produce, or amount to theft of Government or private property.

It is the business of the substantive criminal law to lay down, either in a general Penal Code, or partly in that and partly in special laws, the acts and omissions which constitute offences, the punishment to which they are liable, and any circumstances which either excuse the acts and prevent their being punishable by law, or which aggravate them.

The question how offences may be detected, inquired into, and brought to trial, belongs to the domain of Criminal Procedure, and will be dealt with in a chapter devoted to that subject. Some remarks also on the subject will naturally be made in the course of our study of the official duties of a forest officer.

§ 2.—"*Forest Offence.*"

"Forest offence," as defined for the purposes of the Forest Act, means an offence punishable under that Act; but it is by no means intended that there can be no such thing as an offence against the forest, or in some connection with it, unless a special section of the Forest Act can be quoted. The existence of a special law does not (in the absence of express provisions) alter the general criminal law, still less does it render excusable acts done in connection with forest produce or the forest estate itself, which are offences under the Penal Code, though not expressly mentioned in the Forest Act.

In section 66 of the Indian Act (the Burma Act has the same provision), it is expressly stated that "nothing in this Act shall

be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it; or from being liable under such other law to any higher punishment than that provided by the rules made under this Act[2], *provided* that no person shall be punished twice for the same offence." Consequently a "forest offence" may be punished either under the Act or the Penal Code according to circumstances.

§ 3.—*Why not all under the Penal Code.*

If it is asked why all offences are not left to the terms of the Indian Penal Code, it may be sufficient to reply: first that, even in the case of offences which, no doubt, comes within the definition of "mischief," "criminal trespass," or "theft," &c., it is a great advantage to have the *specific kinds* of such offences stated in the Forest Act, so that then the most ignorant person may know what acts he must avoid in a forest, without having to reason legally and understand the process by which such acts would be brought within the meaning of a definition of the general penal law. For the general law must necessarily define the offence it punishes, in general or abstract terms so as to cover the great variety of actual circumstances under which the offence might be committed, whereas the Forest Act is under no such obligation, but may individually specify almost all the acts it wishes to suppress. Next is an advantage to have the forest offences grouped under one or two general heads, so that a uniform and suitable standard of punishment[3] may be applied, and also that such offences may be disposed of by a similar summary procedure on trial.

[2] This is evidently a clerical error for "provided by this Act, or by the Rules made under it."

[3] The Indian Acts have provided one general limit of punishment for all forest offences, except one or two which are specially dealt with, and that is six months' imprisonment with fine up to Rs. 500 or both, as a maximum. In Burma, as regards reserved forest, a distinction is made into offences punishable with fine only, and those punishable as under the Indian law. Considering that the Magistrate has discretion in all cases to inflict only a petty fine, if he thinks it sufficient, I see no particular advantage in this distinction

But, besides this, there are offences specially affecting forests which either do not come at all under the Penal Code, or could only be reduced to the terms of that law by a process of argumentation, which might in some cases be technical and unsatisfactory.

This results from the peculiar risks to which forests are exposed and to the exceptional circumstances which exist in respect of forest produce[4].

§ 4.—*Offences which ought to be left to the Penal Code.*

On the other hand, there are some offences so clearly coming under the Penal Code that there would be no object in specially providing for them under the forest law.

For example, any gross theft of wood—beyond the petty acts of illicit cutting which come under the specific terms of the Forest Act—can obviously more conveniently be tried formally under the Penal Code and receive the punishment then awarded to a crime, not merely to a transgression or petty offence. So the offence of "receiving stolen property knowing it to be stolen" is not specifically mentioned in the Forest Act; but it is obvious that an offence of this kind can, without any need of explanation or argument, be

[4] As an instance of a rule due to exceptional risk, I may mention the provision (Section 25c) against carrying fire in a reserved forest except at a season permitted by the forest officer. It would be very difficult to bring this under any section of the Penal Code: (except as a breach of a lawful order made by a public servant), but even so, the forest law would still have to enact that forest officers had power to prohibit carrying fire under certain circumstances; so that it is much simpler to make special prohibition at once in the Forest Act. "Burning lime, charcoal," &c., is an offence in the forest because of the risk, even though the conflagration of the forest, as a direct act of mischief, should not follow.

In a few cases also the exceptional circumstances of forest management make the Penal Code definition inapplicable. Thus a property mark, for the purposes of the Penal Code, refers only to such marks on merchandise or 'movable property, and it would not include a mark on a standing tree. It is necessary for forest purposes to punish the fraudulent use of marks on standing trees as well as on logs, which are 'moveable property' (see Indian Penal Code, sections 479—83.) The provision about counterfeiting marks" also does not, at any rate sufficiently, meet the case of altering one timber mark into another, erasing or defacing marks, which are offences specially to be provided against if timber is to be kept safe during transit.

committed in respect of wood, or other produce having saleable value, just as much as in respect of jewellery or personal effects[5].

Besides offences directly connected with timber in transit which naturally come under the Penal Code there are also many offences, *indirectly* connected with forests, which must necessarily be left to the ordinary Criminal law.

It is then, I hope, clear that under appropriate circumstances the Indian Penal Code, no less than the Forest Act itself, may be invoked for the protection of forests and the produce in transit.

§ 5.—*Practical rule as to when one law and when the other should be adopted.*

It will be well then to collect some practical conclusion as to the use of either law in prosecution.

First, all ordinary and not very grave offences should be prosecuted under the *Forest Act*, but—

(*a*) Graver offences causing serious damage (and where a six months' sentence with or without fine would be insufficient), must be prosecuted under the Penal Code[6];

Theft of wood in transit, and also of wood from the forest where in any considerable quantity or value, should be prosecuted as 'theft' under the Code; and any case of 'receiving' or 'concealing' stolen property in connection with such proceedings, *can* only be so dealt with.

[5] In one case, that of altering or destroying boundary marks, though this is clearly an offence under section 434 of the Indian Penal Code, the Forest Act has prescribed a special and heavier penalty. The reason of this is, that forest boundaries are often specially difficult of protection and their destruction (at such places where building materials are obtained with difficulty and at great cost) is particularly injurious. Damage to such marks is also exceptionally serious because the labor of re-ascertaining the position, &c., may often be very great and old disputes may be rekindled; whereas boundary marks between two fields which in what the Penal Code probably contemplates, are easily and quickly restored without special risk of disputes.

[6] Unless of course, as in section 62, the Forest Act itself has a special and sufficiently severe punishment. These grave cases will usually be prosecuted with the aid of legal advice.

(*b*) 'Abetment' of forest offences must be charged under the Indian Penal Code, with reference either to a section of the Penal Code or the Forest Act, as the case may be;

(*c*) In cases where there has been delay in applying the Forest Act to certain lands under charge of the Forest Department, the Forest Act offences could not be charged: therefore mischief, theft, &c., to the forest could only be under the Penal Code[6].

[6] Unless there is some special law which could more conveniently be used (as in the Punjab Act IV, 1872, section 48).